E-002/GR-91-1 ORDER AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Application of Northern States Power Company for Authority to Increase its Rates for Electric Service in the State of Minnesota	ISSUE DATE: February 19, 1992 DOCKET NO. E-002/GR-91-1 ORDER AFTER RECONSIDERATION

PROCEDURAL HISTORY

I. Proceedings to Date

On January 28, 1991, Northern States Power Company (NSP or the Company) filed a petition seeking a general rate increase of $98,198,000, or 8.1% over current rates, effective March 29, 1991. The filing was supplemented by the Company on February 12, 1991. After filing further supplemental information, the Company later reduced its proposed revenue deficiency to $83,387,000.

On March 11, 1991, the Commission accepted the Company's original and supplemental filings, suspended the proposed rates, and ordered contested case proceedings under Minn. Stat. § 216B.16, subd. 1 (1990). The Office of Administrative Hearings assigned Administrative Law Judge Richard C. Luis to preside over contested case proceedings.

On March 22, 1991, the Commission set interim rates under Minn. Stat. § 216B.16, subd. 3 (1990). Interim rates were authorized as of March 29, 1991, and were set at a level allowing an additional $71,904,000 in annual revenues.

On November 27, 1991, following the conclusion of contested case proceedings, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER. In that Order the Commission found, among other things, an appropriate test year rate base for NSP of $2,228,283,000, an overall rate of return of 10.04%, and a test year revenue deficiency of $53,460,000.

On December 17, 1991, the Company, the Department of Public Service (the Department), and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed timely petitions for reconsideration of the November 27 Order. On December 18, 1991, Mankato Citizens Concerned with Preserving Environmental Quality (Mankato) filed an untimely petition for reconsideration.

Comments regarding the petitions for reconsideration were filed on December 27, 1991 by the Company, the Department, and North Star Steel (NSS). Metalcasters of Minnesota (Metalcasters) filed comments on December 26, 1991. Champion International (Champion) filed comments on December 30, 1991.

On January 6, 1992, the Commission its ORDER GRANTING RECONSIDERATION. In that Order the Commission granted the reconsideration petitions filed by the Company, the Department, the RUD-OAG and Mankato for the purpose of further review and final determination.

The Commission met to consider the petitions for reconsideration on January 21, 1992. Based upon the parties' filings, the statements of the parties at hearing, and an independent review of the entire record of this proceeding, the Commission makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS AND CONCLUSIONS

II. Commission Action

Numerous issues were raised by the four parties who petitioned for reconsideration. The issues raised by the petitioners will be taken up individually.

A. Budgets

In its petition for reconsideration, NSP asked for clarification of three items drawn from the November 27, 1991 rate case Order:

1. For a rate case filed early in 1992 based on a 1992 test year, NSP asked to be exempted from the FERC subaccount summary, application of the DRI, and the annual summary of contingency funds. NSP stated that it would be unable to incorporate those items into a 1992 test year since the 1992 budgets were developed prior to the November 27 Order.

2. NSP asked to be allowed to file translation reports at the time of filing a future rate case, and not to be required to make the translation reports part of the official filing. NSP stated that the reports may be voluminous and would therefore unduly enlarge the formal rate case filing.

3. For post-1992 test years, NSP requested clarification of the degree to which the FERC subaccount requirement applies to the capital budget. NSP stated that it is very difficult to summarize the capital budget according to FERC subaccounts.

4. For post-1992 test years, NSP requested clarification that the DRI not be considered the exclusive measure of reasonableness, or the upper limit for future expense increases.

The Department replied that it was willing to work with the Commission, NSP, and interested parties to address the budget issues raised by NSP and to ensure that the next NSP rate case filing is accurate and complete.

NSS stated that the DRI exemption issue should be taken up in the context of NSP's next rate case filing.

NSP informed the Commission at hearing that many of the budget issues NSP raised would be rendered moot or less imperative if NSP decided to delay its next rate case filing until late in 1992 and base it upon a post-1992 test year. Since the reconsideration hearing, the Company has informed Commission staff that NSP has decided to delay the rate case filing.

Both NSP and the Department have expressed their willingness and desire to meet regarding clarification of future budget filing requirements. The Commission strongly encourages such interaction and cooperation. If budget filing issues are addressed and resolved at the time of budget development, the result can be significant savings of time, energy and money at the time of rate case review. Ratepayers and state agencies alike can benefit from such savings.

Because NSP and the Department intend to meet and cooperate regarding budget requirements, the Commission finds that any remaining budget issues will best be addressed in the context of a future rate case. Should the Company find that it is impossible to meet the present budget requirements in a rate case test year, the Company may, in a separate petition or in a rate case filing, seek a waiver of specific requirements. Any such request would be evaluated on its merits and would be subject to comment by interested parties.

B. Cogeneration Litigation Fees

<u>The rate case Order</u>

In the November 27, 1991 NSP rate case Order, the Commission disallowed litigation fees for two types of legal proceedings: dispute resolution regarding certain cogeneration contracts, and antitrust/RICO legal defense. As a result of the Commission's decision, the Company's rate base was reduced by $262,000 and net income was increased by $285,971. In its December 17, 1991 petition, NSP asked the Commission to reconsider its findings on the cogeneration litigation fees.

NSP's requested cogeneration litigation fees arose from a contractual dispute between the Company and a qualifying facility, the Rosemount Cogeneration Joint Venture (the Joint Venture). Following contested case proceedings in the NSP/Joint

Venture dispute, the Commission issued an Order[1] construing the parties' cogeneration contract and granting the Joint Venture attorneys' fees. The attorneys' fees were awarded pursuant to Minn. Stat. § 216B.164, subd. 5 (1990), which states in part:

> The commission in its order resolving each such dispute shall require payments to the prevailing party of the prevailing party's costs, disbursements, and reasonable attorneys' fees, except that the qualifying facility will be required to pay the costs, disbursements, and attorneys' fees of the utility only if the commission finds that the claims of the qualifying facility in the dispute have been made in bad faith, or are a sham, or frivolous.

Positions of the parties

NSP argued upon reconsideration that in a contractual dispute between a utility and a qualifying facility, the utility's viewpoint will usually be favorable to ratepayers. According to the Company, the utility will attempt to contain costs in the dispute; lower costs will benefit ratepayers through lower or stable rates. NSP argued that a utility's shareholders would be neutral to the decision to pursue litigation because any costs saved would benefit ratepayers, not shareholders, through rates. For these reasons the Company argued that it is illogical to require shareholders to bear the entire cost of litigation.

NSP also argued that a Commission policy of disallowing recovery for cogeneration litigation fees would eliminate any incentive for a utility to pursue litigation in cogeneration matters, even when a qualifying facility is clearly overreaching.

The Department argued that NSP's arguments were contrary to the statute on cogeneration attorneys' fees and that NSP's fees were not normal costs in the provision of utility service.

Commission analysis

The Commission examines each request for utility recovery of cogeneration fees on a case by case basis. While examining each request, the Commission must keep in mind the legislative intent expressed in Minn. Stat. § 216B.164, subd 1 (1990) of providing "the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public." This is the framework in which the Commission has dealt with the Company's request for recovery in the original rate case and upon reconsideration.

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[1] In the Matter of the Petition of Rosemount Cogeneration Joint Venture, Biosyn Chemical Corporation, and Oxbow Power Corporation for an Order Resolving a Dispute with Northern States Power, Docket No. E-002/CG-88-491, ORDER GRANTING PETITION, CONSTRUING CONTRACT, AND REQUIRING PAYMENT OF COSTS AND ATTORNEYS' FEES (May 11, 1989).

The Commission agrees with the Department that it is hard to imagine a scenario in which a utility should be allowed recovery of legal fees paid to a cogenerator because the utility has engaged in litigation against a cogenerator who has "overreached" in an attempt to charge excessive fees. Under the cogeneration fee statute, an overreaching cogenerator would not be considered the prevailing party in a contract dispute, and would not be awarded attorneys' fees. The utility would thus not request rate case recovery of the payment of those fees. The Commission is therefore unpersuaded by the Company's argument that a utility must have the incentive of fee recovery in order to embark on litigation against an overreaching cogenerator.

The Commission continues to find that the cogeneration litigation expenses did not arise in the normal course of utility business. Entering into a contract with the qualifying facility was part of the normal course of providing utility service. Doing business with the cogenerator under the contract, as originally contemplated by the parties, would have been normal utility business. It was a management decision to engage in litigation with the Joint Venture rather than to proceed under the contract. It is the shareholders, not the ratepayers, who should pay for this decision.

The Commission finds that the record supports the exclusion of NSP's cogeneration litigation fees from rate case expenses.

C. Coal Transportation and Nuclear Fuel Brokerage

<u>The rate case Order</u>

NSP contracts with Burlington Northern Railroad for coal transportation services. Under the contract NSP transports coal for its utility plant use and also transports coal for the University of Minnesota (U of M) for a fee. A decreasing unit cost per ton is applied to all the coal transported.

NSP also brokers nuclear fuel transactions to obtain nuclear fuel for its own facilities and for use by other parties. Knowledge, expertise and the key employee of NSP's internal brokerage enterprise have been shared with the Company's external brokerage business.

In its November 27, 1991 NSP rate case Order, the Commission included revenues and expenses of the U of M coal transport and external nuclear brokerage enterprises in rate case treatment. The Commission found that the transport and brokerage enterprises benefitted from pooled discounts and increased market leverage stemming from utility activity. It was also unlikely that NSP would have been in these businesses without their close involvement with the regulated utility business. For these reasons, the Commission determined that there was a sufficient nexus between the U of M transport and external nuclear brokerage activities and utility activity to support their inclusion in the rate case.

Positions of the parties

In its request for reconsideration NSP advocated the same test for treatment of non-traditional utility activities as it had urged in the rate case. According to NSP's standard, a utility enterprise must be accorded below the line treatment if the activity is not necessary for utility service and competition for the activity exists or is reasonably probable. NSP argued that its U of M coal transport and external nuclear brokerage business should be given below the line, or nonoperating, treatment under this standard. NSP also stated that the Commission's "nexus" test is inherently ambiguous and fails to provide sufficient prospective guidance for utilities.

The Department supported the Commission's original decision regarding coal transport and nuclear fuel brokerage.

Commission analysis

The Commission is unpersuaded by NSP's restatement of its proposed standard for rate case treatment of nontraditional utility enterprises. The Commission does not agree that the "nexus" test is inherently ambiguous or that the Company's proposed standard provides any more concrete guidance. The Commission adopted the nexus standard because it is sufficiently flexible to allow the Commission to apply its discretion and expertise to different fact circumstances, yet sufficiently concrete to be reliable. The nexus guide is a clear statement of the intertwining and interdependence of nontraditional regulated utility activities with the traditional provision of utility service. The Commission applied this standard to the nuclear brokerage and coal transport activities and the result was predictable and clear. The Commission finds that the nexus standard is clear and reasonable, and the resulting treatment of external nuclear brokerage and U of M coal transport is appropriate and supported by the record.

D. Chippewa Land Sales

The rate case Order

For purposes of the rate case Order, NSP's Minnesota utility enterprise was referred to as NSP-M; NSP's wholly owned subsidiary in Wisconsin was referred to as NSP-W. NSP-M and NSP-W are two separate public utilities. Any power interconnection or exchange between the utilities is governed by an Interchange Agreement and regulated by the FERC.

In 1920 NSP purchased approximately 8,500 acres of land around the Chippewa Flowage in Wisconsin. NSP-W leased the land to its subsidiary, which in turn charged NSP-W toll charges for use of water located on the land. In 1984 NSP-W sold the land for an after-tax gain of approximately $5.5 million.

In the November 27, 1991 rate case Order, the Commission found that the link between the Chippewa land sale gains and Minnesota ratepayers is too tenuous to support inclusion of the gain in the rate case.

Positions of the parties

Upon reconsideration, the RUD-OAG argued that the burden of proof had been improperly shifted from the Company to the RUD-OAG. The RUD-OAG stated that the Commission should require the Company to disprove ratepayer burden from the land rather than require the RUD-OAG to prove the burden.

The RUD-OAG cited In the Matter of the Petition of Continental Telephone Co., 389 NW 2d 910 (1986) for the proposition that a utility must meet its burden of refuting any viable allegation raised by another party to a rate case. The RUD-OAG argued that it had raised a viable presumption of burden on Minnesota ratepayers which must now be disproved by NSP. According to the RUD-OAG, the presumption arose from the fact that the land was indisputably sold for a profit and was recorded on NSP-W's books prior to the sale as "Utility Plant Leased to Others." The RUD-OAG also stated the following as facts which lead to a presumption of ratepayer burden:

1. The land was used to provide services in conjunction with NSP-M electric service;

2. NSP had a right to charge NSP-M ratepayers a share of costs of service provided by the Chippewa land.

NSP argued that there had been no shifting of the burden of proof regarding the inclusion of the gain on the land sale. NSP further stated that if the burden were considered to fall on the utility, its burden had been met.

Commission analysis

The Commission does not agree with the RUD-OAG that a burden of proof has improperly shifted from the utility to the RUD-OAG. In the Continental case, the utility was put to its proof because the attorney general had introduced record evidence of interest earned on the utility's cash unreserved account which had not been included in the utility's operating income. Here, the presumption raised by the RUD-OAG is simply not enough to place any greater burden of proof upon NSP than the utility has already sustained.

The RUD-OAG builds its presumption of ratepayer burden upon two facts from the rate case evidence: the Wisconsin land was sold for a $5.5 million profit and the land was recorded on NSP-W's books prior to sale as "Utility Plant Leased to Others." The Commission does not find that these two facts of themselves support the inclusion of the gain in the rate case. The rest of the RUD-OAG's allegations are presumptions based on inferences or conclusory statements. There is nothing in the record to prove that there was rate base treatment of the land or a return of the investment by ratepayers. The record is insufficient to show that Minnesota ratepayers paid a return on the asset. There is no evidence that Minnesota ratepayers shared with utility shareholders a risk of loss associated with the land.

As in all cases before it, the Commission must ground its decision on the record. The RUD-OAG has not brought forward meaningful record evidence to support its allegation of a burden upon Minnesota ratepayers. NSP has not failed to meet factual allegations in this matter and the burden of proof has not been improperly shifted to the RUD-OAG. The Commission will not require an adjustment to NSP's rate base or income to reflect the gain on sale of the Chippewa land.

E. Economic Development

The rate case Order

In the current rate case NSP proposed test year expenses of $431,187 for five separate economic development projects. In the November 27 Order the Commission allowed the Company to recover 50% of its proposed economic development expenses in rates.

Positions of the parties

In its December 17, 1991 petition, the Department asked the Commission to reconsider its decision allowing the Company a 50% recovery of economic development expenses. The Department argued that economic development programs are not necessary to the provision of efficient, reliable electric service. The Department also argued that the Company had failed to produce hard, measurable data supporting the alleged benefits of the programs. Finally, the Department stated that the Company's economic development programs failed a cost-benefit analysis which included long-term capacity costs.

NSP countered that it had offered sufficient support for inclusion of these expenses. The Company argued that the economic programs passed a cost-benefit analysis because the programs focused on business retention rather than growth.

Commission analysis

The Commission must examine any proposal for economic development recovery in light of Minn. Stat. § 216B.16, subd. 13 (1991), which states:

> ECONOMIC AND COMMUNITY DEVELOPMENT. The commission may allow a public utility to recover from ratepayers the expenses incurred for economic and community development.

As the Commission previously stated in its November 27 Order, this newly enacted statute demonstrates a clear legislative intent to facilitate economic development programs. Although the Commission must still examine every economic development proposal to determine if it results in just and reasonable rates, the goal of community financial health must be weighed in the decision.

Proof of the efficacy of economic development programs will nearly always be indirect. An effective program will promote community economic health, which will be reflected in the financial picture of the utility, which in turn will be reflected on rates. NSP has presented witnesses who emphasized the Company's role in promoting business retention in economically stagnant areas. In light of the economic development statute and the indirect results of these programs, the Commission finds that the Company has presented sufficient proof of the connection between economic development programs and the provision of utility service.

The Commission disagrees with the Department that the Company's cost-benefit analysis is inadequate because it does not include long-term capacity costs. The Company's programs are focused on business retention, which is unlikely to produce a direct effect on capacity. Further, the Commission notes that it allowed the Company only a 50% recovery of its economic development costs. A reduction of proposed expenses by 50% means that the Company's economic development costs to ratepayers are more likely to be outweighed by benefits.

The Commission finds that the Company's 50% recovery of economic development expenses is adequately supported by the record.

F. Rate of Return

The rate case Order

In its November 27, 1991 rate case Order, the Commission fully adopted the testimony of the Department witness, Dr. Luther Thompson. The Commission found that Dr. Thompson's testimony convincingly supported an appropriate return on common equity (ROE) of 12.1%.

In arriving at his recommended common equity figure, Dr. Thompson relied on the DCF method of analysis. This method has been relied upon by the Commission in nearly every case decided since 1978. The Commission found that Dr. Thompson's analysis provided the most reasonable balance of long- and short-term market data and expert judgment in determining the appropriate ROE.

Dr. Thompson arrived at an estimated dividend yield of 6.85% by using the average of the Company's 20 day yield, fourth quarter 1990 yield, and one-year and two-year annual yields. In determining growth rate, Dr. Thompson looked at five- and ten-year growth rates and arrived at an appropriate range of growth rates between 3.5% and 7.0%. Dr. Thompson took the midpoint of that range, or 5.25%, and then tested the figure with a comparable group DCF analysis of 12 similar utilities.

<u>Positions of the parties</u>

In its December 17, 1991 petition, the RUD-OAG requested that the Commission reconsider its finding of a required ROE of 12.1%. The RUD-OAG urged the Commission to accept the testimony of the RUD-OAG witness, Dr. Matityahu Marcus, and find that the required ROE is 11.7%.

The RUD-OAG's main argument was that the Commission is required to set the rate of return at the lowest level which is supported by credible testimony. According to the RUD-OAG, the Commission may not select a higher rate of return unless evidence supporting the lower level is discredited. Drawing from this line of reasoning, the RUD-OAG stated that the Commission was in error when it chose Dr. Thompson's estimated required rate of return, which was higher than the RUD-OAG's proposed ROE.

The RUD-OAG also cited two apparent inconsistencies in the Commission's rate case Order. First, the RUD-OAG quoted the Commission's Order at p. 69, which reads in relevant part: "The ten-year period [of data relied upon] includes an early period of rapidly increasing returns which investors would not reasonably expect to occur in today's market." The RUD-OAG stated that it was inconsistent for the Commission to credit Dr. Thompson's testimony, since he cited ten-year data.

According to the RUD-OAG, the Commission was also inconsistent in its treatment of analysts' forecasts. The RUD-OAG cited the Commission's Order at p. 69, which states: "The Commission agrees with the ALJ that analysts' forecasts should be given less consideration because the decline predicted by analysts for NSP bears little relationship to predictions for the electric industry as a whole." The RUD-OAG pointed out that Dr. Thompson used analysts' forecasts in his calculations of ROE.

The Department defended the Commission's finding of a required ROE of 12.1%. According to the Department, Dr. Thompson's testimony was fully supported by the record and resulted in a fair ROE for NSP.

NSP disagreed with the "lowest legally sufficient" standard of Commission ratemaking espoused by the RUD-OAG. Although NSP had not requested reconsideration of the rate of return issue, the Company stated that there were portions of the Commission's findings on rate of return with which it agreed and portions with which it disagreed. The Company urged the Commission to reexamine the entire record if it chose to reconsider its findings on rate of return.

Commission analysis

The Commission disagrees with the RUD-OAG's proposed standard for Commission decision making. The RUD-OAG's argument is merely a restatement of the "North Central" doctrine, which was directly rejected by the Minnesota Supreme Court in Hibbing Taconite v. Minnesota Public Service Commission, 302 N.W.2d 5 (Minn. 1980). In the Hibbing case, the Court held that the Commission **must not** abandon its decision making role by automatically choosing the lowest possible rate of return presented. The Court stated that the Commission has "...the duty as well as the power to set a just and reasonable rate after a full review of evidence and testimony." Hibbing at p. 11. The Commission therefore finds that the RUD-OAG's proposed "lowest legally sufficient" standard is unacceptable.

The Commission also disagrees with the RUD-OAG's contention that the Commission was inconsistent regarding the use of ten-year data. In its November 27 Order, the Commission rejected NSP's **exclusive** reliance on ten-year historic growth rates in estimating the future growth rate in its DCF analysis. The Commission did not preclude the use of such data in conjunction with other indicators. Thus, it was not inappropriate or unreasonable for Dr. Thompson to rely upon five- and ten-year growth rates in his ROE analysis.

Finally, the Commission rejects the RUD-OAG's argument that the Commission was inconsistent in its treatment of analysts' forecasts. The Department's witness relied upon analysts' forecasts as a measure of the accuracy of his growth estimates, not as the primary source for the growth figure. This is not inconsistent with the Commission's statement that analysts' forecasts should be given less consideration in the estimate of NSP's growth rate.

The Commission finds that the return on equity chosen by the Commission in its November 27 Order is reasonable, appropriate, and supported by the record.

G. CIP and DSM Incentive Issues

In its December 17, 1991 petition, the Company asked the Commission to clarify the following four issues regarding CIP and the demand side management (DSM) financial incentive.

1. Demand side management financial incentive

On March 19, 1991, the Commission issued its ORDER APPROVING PROPOSAL AND REQUIRING FURTHER FILINGS in Docket No. E-002/M-90-1159 (the DSM docket). In that Order the Commission approved a DSM plan for NSP. In the absence of a DSM "track record," the Commission set the potential bonus return on equity at 5%, subject to future assessment and refinement. The Commission specifically required NSP to develop a performance-basis mechanism for the DSM program.

On January 3, 1992, the Commission issued its ORDER APPROVING COST-EFFECTIVENESS, PERFORMANCE AND EVALUATION PLANS in the DSM docket. In that Order the Commission approved the performance-basis mechanism NSP had developed. This mechanism consisted of potential rewards and penalties based upon the cost-effectiveness of DSM projects. The effect on equity ranged from a possible penalty capped at 1% through a possible reward capped at 5%.

In its November 27, 1991 rate case Order, the Commission stated that NSP's Conservation Cost Recovery Charge (CCRC) should not include the bonus return on equity at that time because the bonus was yet to be determined by Company performance and Commission decision. In the Company's petition for reconsideration, NSP asked the Commission to clarify that the Company was now able to include its incentive return of 5% in the CCRC.

The Commission finds that NSP's request is premature and is based upon an incorrect interpretation of Commission DSM decisions. The Commission's January 3, 1992 Order did not authorize a 5% bonus return for NSP for 1991. NSP's actual performance data, which will be reported by the Company on March 1, 1992, will determine the bonus. If a bonus is allowed under the performance mechanism, NSP may then begin tracking that bonus and may seek recovery in its next rate proceeding.

<u>2. Saver Switch</u>

It was the intent of all parties to the rate case to allow NSP to expense a portion of the Saver Switch program costs and to place the remainder of costs into rate base. In the rate case calculations, Saver Switch expenditures of $3,500,000 were placed entirely into rate base. NSP has asked for a clarification that this expense item may be partially expensed and partially rate based.

The Commission finds that NSP's requested treatment of the Saver Switch expenses is appropriate. This program is a load management effort. Under the Company's approved DSM plan, the portion of load management program costs which are used to purchase capital equipment are capitalized in the conservation rate base; the remaining program costs are expensed. Following this method, NSP should be allowed to expense $1,173,700 in Saver's Switch expenses in the current year and to rate base capital expenses of $2,326,300. The Commission will modify the treatment of these expenses accordingly.

<u>3. Miscellaneous CIP filings</u>

In the NSP rate case, CIP expenditures of $1,453,500 which were approved in miscellaneous 1991 CIP filings were given rate base treatment. In the Commission's January 3, 1992 ORDER APPROVING COST-EFFECTIVENESS, PERFORMANCE AND EVALUATION PLANS in the DSM docket, the Commission ordered that future miscellaneous CIP projects be expensed in the year they are initially proposed and be given capitalization and incentive treatment in all subsequent

years. Upon reconsideration, NSP asked that the Commission modify its treatment of the miscellaneous CIP expenses to bring them into conformity with the DSM decision.

The Commission finds that NSP's request is reasonable and appropriate. The Commission will lower the CIP rate base by $1,453,500 and increase CIP expenses by the same amount.

4. Pre-test year CIP expenditures

NSP asked for Commission clarification or modification of two issues stemming from pre-test year CIP expenditures. The Company first asked the Commission to reconsider its disallowance of $543,195 in General and Administrative (G&A) costs, plus associated carrying costs. NSP asserted that these expenses were prudently incurred, were spent in good faith for reasonable purposes, and should be recoverable in rates.

The Commission finds that NSP has raised no new issues regarding the recovery of these expenses. The Commission's reasoning remains the same as it expressed in the rate case Order at p. 35:

> The Commission finds that the $543,195 remaining in the [General Administrative and Regulatory] account represents the same type of expense disallowed in the last rate proceeding and will disallow it here for the same reasons. NSP first received approval for a CIP General and Administrative Account in its 1989 CIP filing. G&A costs incurred apart from specific project costs prior to January 1, 1989 never received Commission approval nor the necessary scrutiny to determine their impact on the cost-effectiveness of NSP's CIP.

The Commission will not allow recovery of pre-test year General and Administrative expenses or carrying costs.

The second issue NSP raised regarding pre-test year CIP expenses is the matter of carrying costs. In the rate case the Commission allowed recovery of disputed CIP project expenses of $658,710, plus associated carrying costs of $22,288. The carrying costs represented amounts which had accrued to these accounts through May, 1989, when the expenses were excluded by the Commission from the CIP tracker account.

In its petition for reconsideration, NSP asked for the first time for recovery of additional carrying costs associated with the disputed pre-test year CIP project expenses. NSP asked the Commission to allow recovery of an additional $108,119 in carrying costs which had accrued since May, 1989.

The Commission will not allow recovery of the additional carrying costs requested by NSP. NSP did not refer to the additional costs at any time during the rate proceeding and did not place evidence regarding the costs in the record. The Commission will not consider this issue for the first time upon reconsideration, nor will it weigh a request which is unsupported by the record.

Financial effects of reconsideration of CIP and DSM issues

In the November 27 Order, the Commission found direct impact conservation expenditures of $14,461,720 and research, development and administrative expenditures of $3,501,451 for the test year. Based on the financial incentive mechanism, the Commission set the CCRC to recover $6,888,895, resulting in a CCRC of $0.0002903 based on test year kWh sales of 23,730,911,000.

Adjusting the November 27 Order to reflect the transfer of $1,453,500 for miscellaneous CIP filings and $1,173,700 for Saver's Switch from conservation rate base to current year expense increases the amount to recover in the CCRC to $8,900,712, resulting in a CCRC of $.0003751 after reconsideration. This adjustment decreases the November 27 rate base by $541,000 including the effects on cash working capital, and decreases the November 27 net income by $1,259,000 including the interest effect.

H. Refuse Derived Fuel

The rate case Order

In the Waste Management Act of 1980, the Minnesota legislature mandated counties in the seven-county metropolitan area to move from landfilling to other methods of disposal for municipal solid waste (MSW). NSP subsequently entered into the business of processing MSW into fuel at two unregulated facilities. The refuse derived fuel (RDF) is burned at the Company's regulated generating plants located at Red Wing and Wilmarth. NSP also sells RDF to United Power Association (UPA), which in turn sells power back to NSP.

In the November 27, 1991 rate case Order, the Commission rejected Mankato's request to remove the Red Wing and Wilmarth facilities from rates. The Company's plant investments in Red Wing and Wilmarth were included in rate base and their operating costs were included in the test year income statement. The cost for power from UPA was also included as a test year cost.

In the rate case Order the Commission also ordered an investigation into NSP's RDF operations. That investigation was initiated on December 12, 1991, when the Commission issued its ORDER INITIATING INVESTIGATION in Docket No. E-002/CI-91-966. The RDF investigation remains open to date.

Positions of the parties

In its December 18, 1991 filing, Mankato asked the Commission to reconsider its rate case treatment of NSP's Red Wing and Wilmarth facilities. Mankato stressed the same arguments it had raised in the rate case: RDF is not an economically priced fuel which is competitive with other fuels; NSP has not proven that the power generated from Wilmarth and Red Wing is competitively priced. Mankato also argued for the first time that it is illegal for NSP to pay UPA a PURPA rate for power.

NSP answered that it had met its burden of proof regarding the Red Wing and Wilmarth operating costs, that Mankato's cost comparisons were inappropriate, and that Mankato's arguments regarding power purchases from UPA failed under the law and on the facts.

Commission analysis

The Commission has carefully examined the arguments raised by Mankato upon reconsideration and finds that they are a restatement of issues raised and answered in the rate case. The reasonableness of Red Wing and Wilmarth operating costs must be viewed on a life cycle basis. NSP has entered into the production and use of RDF in response to changing state, federal and local attitudes toward the disposal of MSW. Since entering into the process, NSP has been engaged in the construction of RDF burning facilities. The Company has also been required to respond to changing pollution control standards. There is evidence in the record that generation at the Wilmarth facility is increasing. In this proceeding the Commission has examined the record in the context of the life cycle of the Red Wing and Wilmarth plants, and has found that test year operations at these facilities support their inclusion in the rate case. Ratepayers have benefitted and will benefit from the Company's ownership and operation of these facilities. The Commission will continue to include the plants in rate base and their operating costs in rate case expenses.

Mankato has cited no legal basis for its argument that NSP's payment of a PURPA rate to UPA is illegal. Further, the argument was raised for the first time upon reconsideration. The Commission will not disallow any part of the UPA power purchase costs.

I. Allocation of Winter Peaking Plant Costs

The rate case Order

In the rate case, the Commission found NSP's class cost of service study (CCOSS) reasonable and acceptable. The Commission did, however, require modifications to the classification or allocation of certain specific costs in NSP's study.

One of the CCOSS issues addressed by the Commission was NSP's treatment of winter peaking plant costs. The Commission required the Company to modify its CCOSS so that winter peaking costs were no longer allocated to the Peak-Controlled interruptible subclass.

Positions of the parties

In its December 17, 1991 petition, NSP asked the Commission to reconsider its finding regarding winter peaking cost allocation. The Company argued that Peak-Controlled customers are in essence given firm service during the winter, since their service can only be interrupted at a peak (unless there is a system emergency) and NSP is a summer-peaking utility. NSP reasoned that Peak-Controlled customers do not contribute capacity to the system during the winter and should therefore be allocated winter peaking capacity costs. The Department supported NSP in its request for reconsideration of this issue.

NSS, Champion and Metalcasters supported the Commission's position on this issue.

Commission analysis

All parties who have addressed this issue have simply restated their original arguments. The Commission remains convinced that its reasoning was sound.

It is inappropriate to allocate winter peaking costs to the Peak-Controlled interruptible subclass, because interruptible customers by their nature do not cause peaking costs to be incurred. Because NSP has the right to interrupt Peak-Controlled customers in the winter, NSP can exclude these loads in winter capacity planning. While Peak-Controlled customers historically have not been interrupted in the winter, they would be interrupted if peak needs required interruption; utility planners can determine capacity needs accordingly.

J. Interruptible Load and DSM Goals

The rate case Order

In the rate case, NSP sought to apply a value of service concept to the pricing of interruptible service. Applying this concept would have resulted in larger percentage increases to the two interruptible subclasses, Peak-Controlled and Energy-Controlled, than would have occurred in the commercial/industrial group.

The Commission found that NSP's existing demand discount percentages for interruptible customers should be maintained. Responding to several parties' requests, the Commission ordered NSP to study and report on various interruptible rate design and pricing options. The study is to be submitted at the time of NSP's next rate case, or by June 1, 1992, whichever is first. The Commission directed NSP to include in the report, among other things, a discussion of the interruptible potential on its system and the optimal level of interruptible load, based on its DSM goals.

Positions of the parties

Upon reconsideration, NSP requested that the Commission remove consideration of the Company's interruptible load and DSM goals to the ongoing resource planning docket, docket No. E-002/RP-91-682. Alternatively, if the Commission did not transfer consideration of these issues, NSP requested that the Commission clarify its November 27 Order and provide the Company an opportunity to meet with interested parties regarding its compliance filing requirements.

NSS and Metalcasters stated that interruptible load and DSM goal issues should be examined in the Company's next rate case proceeding, not as part of the resource planning docket. The intervenors argued that they would be forced into an undue financial burden if required to monitor these issues in a separate proceeding with which they might not otherwise be involved.

Commission analysis

The Commission will not defer NSP's interruptible load/DSM study and report requirement to the resource planning docket. The resource planning process is an ongoing, long-term approach to the determination of just and reasonable rates. While interruptible load/DSM goals will also be examined within the resource planning docket, these issues are critical to the immediate goal of setting just and reasonable rates in the rate case proceeding. The information contained within NSP's interruptible load/DSM study must be available for consideration within the rate case. The Commission also agrees with the intervenors that deferral of these issues into the resource planning docket could preclude participation by some intervenors.

The Commission finds it unnecessary to clarify its prior Order regarding the Company's meeting with interested parties. The Commission has a long-standing and well-known policy of encouraging parties to cooperate regarding controversial or first-time filing requirements. The Commission believes that such a practice can save time and effort for all parties concerned. Interaction during the development of filings can often prevent future misunderstandings, problems and possible litigation. The Commission will encourage interested parties to meet with NSP regarding the Company's interruptible load/DSM compliance filing.

K. Maintenance of Customer-owned Street Lighting

The rate case Order

In its November 27, 1991 Order, the Commission deregulated NSP's maintenance service for customer-owned street lighting equipment. The Commission also required the Company to file its proposed accounting and allocation procedures for removing this service from regulated operations. The Commission allowed NSP 60 days in which to submit this filing, as well as any proposed standards NSP wished to submit regarding competitive electrical contractor services.

Positions of the parties

Upon reconsideration NSP requested an extension of time in which to submit its compliance filing. The Company explained that deregulation of its street light maintenance operation requires a revision of accounting, billing and allocation requirements. The Company must also conduct a precise cost study to isolate maintenance costs, redesign the tariff and related rules and regulations, and refine the existing methodology for identifying which street lights are maintained by which vendors. NSP estimated that it would require six months to complete these tasks.

NSP also requested the Commission to modify its rate case Order to allow the Company to submit additional information regarding the deregulation of the entire street lighting operation.

The Department supported the Commission's decision in the rate case Order.

Commission analysis

The Commission finds that the reasons the Company has given for a time extension are reasonable. The accounting and cost study requirements for deregulation of the maintenance service are considerable. No party will be harmed by the delay. The Commission will grant NSP a time extension until July 1, 1992 in which to submit its compliance filing regarding the deregulation of street light maintenance.

The Commission will not modify its Order to allow the Company to submit further information regarding the deregulation of the entire street lighting service enterprise. The information outlined in the Commission's Order is the necessary and appropriate information with which the Commission will consider the issue of deregulation of customer-owned street light maintenance in this case.

L. Conservation Rate Break

On its own motion, the Commission reconsidered its decision on the conservation rate break. Following a discussion of the parties' positions and its earlier decision, the Commission affirmed its November 27, 1991 Order.

In that Order, the Commission adopted NSP's proposal for a phase out of the conservation rate break. This position was supported by the Department. The Commission finds that the reasoning in the November 27 Order is sound and balanced. The Order reflects the Commission's reluctance to eliminate the conservation rate break in the future without a thorough examination of other options for residential customers. The Order also reflects the Commission's continuing commitment to the development of improved programs for residential customers and the exploration of alternative rate designs that could more effectively promote conservation in future cases.

III. Conclusion

The Commission has carefully examined the entire record of this proceeding and the filings of the parties, and has listened to the statements of the parties at hearing. The Commission finds that the November 27, 1991 rate case Order is supported by the record and achieves a result which is just and reasonable. With the exception of the adjustments to the Company's CIP mechanism noted above, and the time extension granted for a compliance filing, the Commission's November 27 Order remains unmodified.

The adjustments ordered will result in modifications to the Company's rate base, operating income and revenue deficiency. The Company's modified financial summary follows.

IV. Financial Summary After Reconsideration

A. Rate Base Summary

After reconsideration, the Commission concludes that the appropriate rate base for the test year is $2,227,742,000 as shown below (000's omitted):

Utility Plant in Service	$4,761,823
Less: Reserve for Depreciation	2,115,273
Net Utility Plant in Service	$2,646,550
Construction Work in Progress	153,086
Plant Held for Future Use	520
Accumulated Deferred Income Taxes	(611,036)
Working Capital	
Cash Working Capital	(69,070)
Materials and Supplies	70,052
Fuel	29,438
Prepayments	5,731
Other	2,471
TOTAL AVERAGE RATE BASE	$2,227,742

B. Operating Income Statement Summary

After reconsideration, the Commission concludes that the appropriate Minnesota jurisdictional operating income for the test year under present rates is $190,636,000 as shown below (000's omitted):

Operating Revenues:	
Retail Electric Revenues	$1,207,725
Late Payment Revenues	3,412
Miscellaneous Service Revenues	2,598
Total Minnesota Retail Revenues	$1,213,735
Other Operating Revenues	157,953
Gross Earnings Taxes	18,049
Total Operating Revenues	$1,389,737
Operating Expenses:	
Production	$ 589,688
Transmission	28,029
Distribution	77,173
Customer Accounts	32,488
Customer Information	7,912
Administrative and General	101,134
Depreciation and Amortization	163,515
Taxes:	
Real Estate and Property	119,626
Gross Earnings	18,049
State and Federal Income	67,827
Deferred Income	9,218
Net Investment Tax Credit	(6,494)
Total Operating Expenses	$1,208,165
Operating Income Before AFUDC	$ 181,572
AFUDC	9,064
Operating Income With AFUDC	$ 190,636

C. Gross Revenue Deficiency

After reconsideration, the above Commission findings and conclusions result in Minnesota jurisdictional gross revenue deficiency for the test year of $55,484,000 as shown below (000's omitted):

Rate Base	$2,227,742
Rate of Return	10.04%
Required Operating Income	$ 223,666
Test Year Net Operating Income	190,636
Operating Income Deficiency	$ 33,030
Revenue Conversion Factor	1.679825
Gross Revenue Deficiency	$ 55,484

In the test year income statement, the Commission found that the Minnesota retail revenue at present rates is $1,213,735,000. Adding the gross revenue deficiency of $55,484,000 to this amount results in total authorized revenue from Minnesota retail customers of $1,269,219,000.

ORDER

1. Northern States Power Company is entitled to increased annual revenues of $55,484,000 to produce total annual operating revenues of $1,269,219,000 from Minnesota retail customers for annual periods beginning March 29, 1991.

2. Within 30 days of the date of this Order, the Company shall file with the Commission for its review and approval, and serve on all other parties in this proceeding, revised schedules of rates and charges reflecting the revenue requirement and the rate design decisions contained in the Commission's November 27, 1991 Order and the Order herein. The Company shall include proposed customer notices explaining the final rates. Parties shall have 15 days to comment on the compliance filing.

3. Within 30 days of the date of this Order, the Company shall file with the Commission for its review and approval, and serve upon all parties to this proceeding, a proposed plan for refunding to all customers with interest the revenue collected during the interim rate period in excess of the amount authorized herein minus the adjustments authorized in the Commission's November 27 Order and the Order herein, the amount of the Company's rate case expenses, and the amount in the CIP tracker account. Following the filing of this plan, the parties shall have 15 days to comment.

4. Within 60 days of the date of this Order, the Company shall file with the Commission, and serve upon all parties, detailed rate case expense documentation. This filing shall include copies of invoices from outside witnesses, counsel, and all other persons, agencies, or businesses to whom rate case expenses were paid. All such documentation shall be identified with the corresponding rate case expense projections in this filing in order to permit comparison.

5. The Commission's November 27 Order is modified to allow NSP to expense $1,173,700 in Saver's Switch expenses in the current year and to rate base Saver's Switch capital expenses of $2,326,300.

6. The Commission's November 27 Order is modified to lower the Company's CIP rate base by $1,453,500 and to increase CIP expenses by the same amount.

7. The Company is granted a time extension until July 1, 1992 in which to submit its compliance filing regarding the deregulation of customer-owned street light maintenance.

8. All other requirements of the Ordering Paragraphs of the Commission's November 27, 1991 Order remain in force and effect.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)